

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3041 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DEPUTY EXECUTIVE ENGINEER

Versus

JASWANTBHAI KHODIDAS PANDYA

Appearance:

MR DD VYAS for Petitioner
MRS DT SHAH for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 18/07/2000

ORAL JUDGEMENT

Heard Mr. D.D. Vyas, learned counsel appearing
on behalf of the petitioner and Mrs. D.T. Shah, learned
counsel appearing on behalf of the respondent.

2. The respondent was working as a daily wage labour under the petitioner. In year 1978-79 respondent worked for 109 days, in 1979-80 he worked for 280 days, in 1980-81 he worked for 302 days and in 1981-82 respondent worked for 88 days. It is asserted by the petitioner that after 21-8-1981 respondent daily wagger did not report for work and he left the place. Four years thereafter the respondent moved the Labour department raising the dispute that he has been illegally terminated by the petitioner on 21-8-1981 and the dispute has been referred to the Labour Court at Rajkot, which registered the case as Reference (LCR) No. 454 of 1985. The Labour Court after taking evidence and after hearing the parties passed the judgment & award on 16-2-1989, directing the petitioner Dy. Executive Engineer, Flood Relief (Panchayat R & B) Sub Division, Patdi, district Surendranagar to reinstate the workman Jaswantbhai Khodidas Pandya in service to his original post with effect from 15-1-1985. The Labour Court also awarded back wages to the respondent from 15-1-1985 till he is reinstated in service. From the back wages, the Labour Court has directed the petitioner to deduct Rs.50/- per month for his engagement in the work during the said period. Having felt aggrieved by the judgment & award of the Labour Court, Dy. Executive Engineer - the petitioner has filed this petition for quashing the judgment & award passed by the Labour Court on 16-2-1989 in Ref. (LCR) No. 454 of 1985.

3. Mr. Vyas, learned counsel appearing on behalf of the petitioner argued that the workman did not work for 240 days in the year of his alleged termination and therefore he cannot be treated as a workman and as such the Labour Court has committed an error in directing the petitioner to reinstate the respondent. Learned counsel further submitted that, it is not a retrenchment within the meaning of Sec. 25-B read with 25-F of the I.D. Act. Learned counsel further contended that the respondent was engaged in seasonal work as the petitioner division was discharging the duties in the flood relief work and therefore, as and when additional workers were required petitioner engaged such persons on daily wage basis. It is also contended that the regular employees could not cope up with the work of flood control during rainy season additional labours were engaged to complete the relief work. It is therefore submitted that these works are temporary in nature and during rainy season only. The respondent workman was engaged mainly during rainy season for flood related work. Learned counsel Mr. Vyas further submitted that the Labour Court has committed an error in directing the petitioner to

reinstate the petitioner in his original post with effect from 15-1-1985. It is contented that for daily wagers there is no post, for them Nominal Muster Roll Register is maintained by the petitioner where names of daily wage workers are entered and works are allotted to such daily wage workers as and when additional work is available. Learned counsel further submitted that the reinstatement order of the Labour Court can only mean that his name be entered in the Nominal Muster Roll Register from 15-1-1985. Learned counsel also submitted that there may not be any question of payment of back wages because the respondent did not work for the period he claimed back wages, and therefore no back wage can be paid.

4. Learned counsel Mrs. Shah for the respondent fairly submitted at the instructions of respondent, she is not pressing claim of back wages but the order of reinstatement as passed by the Labour Court should be implemented by the petitioner. It is an admitted fact that the respondent workman is a daily wage worker working with the petitioner. Therefore the order of the Labour Court for reinstatement on original post with effect from 15-1-1985 can mean that, his name should be entered in the register (NMR) on the terms and conditions on which he was earlier engaged. Learned counsel Mr. Vyas for the petitioner submitted that there may not be any difficulty in entering name of the respondent in the NMR from 15-1-1985 since the respondent was engaged by the petitioner as a daily wage labour. It is expected that after entering the name of the respondent in the NMR he will be given work as per the terms & conditions on which he was earlier engaged. Accordingly the petitioner is directed to enter the name of the respondent in the NMR as a daily wage worker from 15-1-1985 on the terms & conditions on which he was earlier engaged. Since learned counsel for the respondent waived back wages of the respondent, as per his instructions, no back wage is required to be paid by the petitioner to the respondent. With the aforesaid modifications and directions, present petition is allowed in part. Rule made absolute to the aforesaid extent. However, I make no order as to costs.

Dt; 18-7-2000

(P.K. Sarkar, J)

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